

**MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT**

DATE: April 16, 2008
TIME: 9:00 a.m.
PLACE: Kalanimoku Building
Conference Room 132
1151 Punchbowl Street
Honolulu, Hawaii 96813

Commissioner Lawrence Miike called the meeting of the Commission on Water Resource Management to order at 9:00 a.m.

MEMBERS: Dr. Lawrence Miike, Mr. James Frazier, Ms. Meredith Ching, Mr. Neal Fujiwara, Ms. Donna Kiyosaki, Dr. Chiyome Fukino

EXCUSED: Ms. Laura H. Thielen

STAFF: Deputy Director Ken Kawahara, Robert Chong, Lenore Ohye, Roy Hardy, Ronnie Torres, Ryan Imata, Chui Cheng, Dean Uyeno

COUNSEL: Julie China, Esq.

OTHERS: Darrell Ing, DHHL; Michelle Walker, WSRSL student; Ben Ganai and Joni Tanimoto, Akinaka & Assoc. Ltd.; Matthew Shannon, WSRSL; Dudley Kubo, NRCS; Kaeo Duarte, Kamehameha Schools, Dr. Ali Fares, Kapua Sproat, Attorney for EarthJustice

All written testimonies submitted at the meeting are filed in the Commission office and are available for review by interested parties.

A. APPROVAL OF MINUTES

1. March 13, 2008

MOTION: (Frazier/Ching)
To approve the minutes.
UNANIMOUSLY APPROVED.

B. ANNOUNCEMENTS

Deputy Director Ken Kawahara announced that during the Legislative Session, Dr. Miike was reconfirmed for another term until 2012.

Staffing of Vacancies: Deputy Kawahara introduced Ronnie Torres, who accepted the Geologist II position. There is also a tentative selection for the Hydrologist position in the Ground Water Regulation Branch but is waiting until the end of session before making a final offer. Deputy Kawahara said currently the House abolished certain positions and the Senate kept positions but took away the funding.

Budget: the Senate Ways and Means Committee passed their version of the State budget (4% cut backs across the board and cutting funding for some vacant positions). Senate and House are in conference committee to discuss and recommend the final version of the budget.

Water Resource Protection Plan: the adhoc group of water professionals held their second meeting on March 28, to clarify comments submitted primarily regarding sustainable yields. The next meeting is schedule for April 21. Roy Hardy has been leading that discussion for the Commission.

Agriculture Water Use Development Plan (AWUDP): the third update has been completed. The Department of Agriculture's consultant provided responses to staff's comments which are being reviewed. Deputy Kawahara said they are still on track to complete the project by the June deadline.

State Water Projects Plan: the fee proposal came in much higher than the available funding. Staff has discussed with Engineering Division various ways to phase the update or prioritize work elements. Deputy Kawahara announced that staff will be meeting with the consultant and the Engineering division shortly to determine the final scope of work.

Molokai Water Working Group: the group has completed its seven meetings under the Water Commission's purview. Deputy Kawahara said that the consultants are preparing the final report as required under the contract scope of work. Staff will brief the Commission on the final report and then it will be shared with the Maui Department of Water Supply to help guide the Molokai Water Use and Development Plan update.

Staff attended the second North Kona Water Protection Working Group (NKWPWG) meeting organize by the Kaloko-Honokohau National Historical Park, and continue to discuss the formation of a working group in Kona. This is in response to the impacts from increasing ground water withdrawals in the areas above the Kaloko National Historical Park, and its affect and mitigative actions for the anchaline ponds in the park. The group is still discussing who the members should be at this large group meeting.

Kona Water Round Table: in addition to the NKWPWG, Deputy Kawahara said they received an invitation to participate with the Kona Water Round Table that is being organized by the Hawaii Department of Water Supply. This group appears to be focusing on a much broader range of issues, some of which overlap with the NKWPWG. The next meeting is on May 14.

East Maui Interim Instream Flow Standards (IIFS): the Division of Aquatic Resources continued stream surveys the first week of April as part of the process for amending the East Maui IIFS. Staff will meet with them to discuss the status of the surveys, identify any missing data gaps and status of the watershed atlas.

Associated to the East Maui IIFS: Deputy Kawahara reported that the Commission staff with the assistance of a facilitator conducted a fact-gathering meeting on April 10, regarding the Instream Flow Standard Assessment Reports for Hanehoi, Honopou, Piinaau, Waiokamilo, and Wailuanui hydrologic units. The meeting was held at the Haiku Community Center. A packet of five draft reports on the best available information regarding these streams were distributed to the Commission. It is not a requirement per statute to have a public meeting but in December 2006, the Commission voted that it was a good idea to solicit comments from the public. Over 100 people attended the meeting and 40+ people presented passionate and emotional testimonies. The deadline for written comment is June 10, 2008.

Discussion took place on the process and decision making. Deputy Kawahara offered to talk to the Chairperson and see if the Land Division could also give a presentation on the Land Board's actions relating to East Maui.

Statewide stream diversion verifications: field work for Maui is completed and data still being inputted. They will be focusing on Kauai next.

Statewide Stream Channel Alteration Inventory Project: staff began contractual discussions on specifics of the scope of work and is finalizing the contract for signatures.

Na Wai Eha Interim Instream Flow Standard (IIFS) Contested Case Hearing-Maui, Iao Ground Water Management Area high-level source water use permit applications and petition to amend interim instream flow standards of Waihee, Waiehu, Iao, and Waikapu Streams: Deputy Kawahara reported that they are continuing to move forward.

Dr. Miike added that they finished the evidentiary hearings on March 4 and the court reporter will be preparing the transcripts by the end of this month. The parties were given 60 days to come up with proposed findings of fact and the decision and order. Dr. Miike said it would take at least two to three months for him to write his decision; the Commission could review it with the Attorney General by the end of the year. Dr. Miike found out that the court reporter has been ill so the transcript will not be ready by the end of the month.

Deputy Kawahara distributed correspondence from the Native Hawaiian Legal Corporation to share with the Commission which was handed out prior to the April 10th public information meeting.

Kukui (Molokai) Contested Case Status: Molokai Properties Ltd. (MPL) announced it is ending its operations on Molokai. MPL has to decide how to meet its PUC obligations. CWRM will proceed with the contested case (copies of the minute order were distributed) for which deadlines have already been set. CWRM has not requested a new application be submitted. Deputy Kawahara said that MPL representatives communicated to the Attorney General's office that there was no change currently in their position regarding Well #17.

Drought Mitigation Projects funded under Act 238: Deputy Kawahara reported that staff continues to execute MOAs as authorized by Commission for the \$4M of funding for drought mitigation projects statewide and working with Fiscal, DAGS, and the deputy attorney general to resolve the issues relating to the transferring of funds between state agencies. An option being discussed with Legislature is to extend the lapse date of June 30, 2008 and specifically allow transfers. Copies of the Status of Drought Mitigation Projects funded under Act 238, dated April 16, 2008, were distributed.

Deputy Kawahara reported that the Commission designated Na Wai Eha for Surface Water Management at the March 13, 2008 meeting held on Maui. A Public Notice of its decision is required by the State Water Code. The date of the public notice will be the effective date of designation. Existing users of surface water will have one year after that date of notice to apply for water use permits from the Commission. Failure to file for an existing use within the one year deadline creates a presumption of the abandonment of the use, and the user must apply for a water use permit as a new use.

Presentations:

- Briefing on the Irrigation Water Requirement Estimation Decision Support System
- Draft Application for Surface Water Use Permit Form for Existing Use

Deputy Kawahara mentioned that there will be at least one presentation at each meeting on various topics to provide more information for the Commission.

Outreach Efforts:

- 4/12 Earth Day Booth at the Waikiki Aquarium
- 4/30 – 5/1 American Water Works Association (AWWA)-Hawaii Section Annual Conference: Presentations by Deputy Kawahara, Roy Hardy on sustainable yields, and Dean Uyeno and Robert Chong on surface water issues
- 5/20 Stream/Riparian Workshop – Presentation by Ed Sakoda
- 5/22 American Society of Civil Engineers (ASCE) – Presentation by Deputy Kawahara

C. STREAM PROTECTION AND MANAGEMENT

1. Application for a Stream Channel Alteration Permit, Stream Bank Lining for Waimanalo/Kahawai Stream, Waimanalo, Oahu, TMK: (1) 4-1-023:065

Presentation by: Robert Chong

Robert Chong presented background information on this application submitted by the Department of Hawaiian Home Lands (DHHL) for a Stream Channel Alteration Permit to construct a streambank lining on Waimanalo/Kahawai Stream. DHHL plans to build a new 11.5 acre subdivision called Kumuhau to provide 52 single family lots for native Hawaiians.

Best management practices for the project will include controlling erosion, sequencing of construction activities and scheduling work during the dry summer period.

Staff received comments from the City and County Department of Planning and Permitting, the Division of Aquatic Resources who was concerned about detention period of the basin, the Engineering Division who requested water demands for the project so that they could be included in the State Water Projects Kona High Level Water Meeting Plan Update, and the Office of Hawaiian Affairs who was concerned that the detention basin might collect non-source pollutants that would flow into Waimanalo Stream.

RECOMMENDATION:

That the Commission approve a Stream Channel Alteration Permit to construct a streambank lining on Waimanalo/Kahawai Stream, Waimanalo, Oahu. The permit shall have a term of two (2) years subject to the Commission's standard permit conditions in Exhibit 5.

Discussion took place regarding the safety and security of the detention basin. Ben Ganai with Akinaka & Associates, Ltd., stated that fencing will be placed around the detention basin. Darrell Ing with the Department of Hawaiian Home Lands stated that the clean up and maintenance of the detention basin will be DHHL's responsibility but that responsibility would be turned over to the homeowner's association. Commissioner Fujiwara asked if it will be written into a document. Commissioner Fujiwara's concern was that runoff and debris entering into the detention basin will require constant maintenance and suggested that a maintenance plan be developed and incorporated into the homeowner association's covenants.

Commissioner Miike asked whether the Kumuhau subdivision will be included with the adjacent subdivision shown on the site plan. Darrell Ing stated that the adjacent subdivision with another 50 lots will come together with the Kumuhau subdivision as one homeowner's association.

It was moved to amend the staff recommendation to include maintenance provisions for the detention basin that will be incorporated into the homeowner association's covenants.

MOTION: (Fujiwara/Frazier)
To approve submittal as amended.
Unanimously approved as amended.

D. PLANNING

1. Request for Approval of New Drought Mitigation Projects Funded Under Act 238, Session Laws of Hawaii 2007

Presentation by: Lenore Ohye.

Lenore Ohye requested approval to replace some of the drought projects that were previously approved by the Commission on December 19, 2007 to receive funding under Act 238. There were four conditions attached to the Commission's approval:

1. Limited to the projects listed in Exhibit 2, with rankings notwithstanding;
2. The sample MOA is a template which may be adjusted;
3. Each MOA is subject to the terms and conditions stipulated by the Chairs and also to be reviewed by the Department of Attorney General;
4. Any new project not contained in Exhibit 2, be brought back to the Commission for review and approval.

Pursuant to Condition 4, the Commission must approve any new project that was not listed in Exhibit 2 of the December 19, 2007 submittal. An Oahu project will now be receiving federal funds, and a Big Island project was withdrawn due to land acquisition issues. Ms. Ohye described the new projects that the County Drought Committees voted on to replace these projects.

RECOMMENDATION:

In compliance with Condition 4 of the December 19, 2007 Commission action, staff recommends that the Commission approve the new drought mitigation projects in the table above. All other aspects of the Commission's December 19, 2007 decision remains in effect.

MOTION: (Frazier/Ching)
To approve the submittal as recommended by staff.
UNANIMOUSLY APPROVED.

E. NON-ACTION ITEMS

1. Briefing on the Irrigation Water Requirement Estimation Decision Support System (IWREDSS)

Presentation by: Roy Hardy and Dr. Ali Fares

Roy Hardy started this presentation in Dr. Fares' absence. Copies of the PowerPoint were distributed.

Mr. Hardy reviewed that it was in May 2006 that the Commission approved entrance into this contract with the College of Tropical and Agriculture and Human Resources (CTAHR) at the University of Hawaii. Mr. Hardy explained that we entered into the year and a half year contract in June with CTAHR for \$93,000.

Mr. Hardy explained that the IWREDSS software is a tool used to estimate crop irrigation requirements for consumptive use permitting in Hawaii. Dr. Ali Fares is the project manager and helped develop this tool. Mr. Hardy pointed out that Dudley Kubo of NRCS was here today.

Mr. Hardy said the software is self-contained.

Dr. Fares arrived and continued the presentation.

Dr. Fares stated that crops have different irrigation water requirements across the growing season. The model will accommodate for this physiological growth.

A number of Commissioners were concerned about the accuracy of the model against actual usage in the field from real users and if the model has been field tested.

Dr. Fares agreed that there should be more field testing.

2. Draft Application for Surface Water Use Permit Form for Existing Use

Presentation by: Robert Chong

Copies of the PowerPoint were distributed.

Robert Chong reviewed the map showing the four (4) watersheds/hydrologic units designated as the Na Wai Eha Surface Water Management Areas: Waihee, Waiehu, Iao and Waikapu; the draft application for an existing use surface water permit that is based on the groundwater permit application; various draft tables; and draft instructions for the existing use application for a surface water use permit.

Mr. Chong said that the next step is the public notice, which will be published on April 30th. April 30, 2008, will also be the effective date of designation; existing use applicants will have one year after the effective date to apply for existing use surface water permits in the Na Wai Eha Designated Surface Water Management Areas.

Commissioner Miike thought there might be some issues regarding the taro water. People may know how much water they might measure going into a taro loi, but a permit is commonly issued based on the amount "used by the loi". Miike felt that most of the users will not know that. It's clear that taro needs certain minimum temperature, and that water flowing through doesn't really count as the amount of water they would be permitted for.

Commissioner Fujiwara asked if Wailuku Water Company needs to get the permit for the Wailuku Country Estates above Happy Valley who use non-potable water. Roy Hardy said his

understanding is that they use water from the ditch. If individuals are claiming domestic use, the Water Code exempts individual domestic use.

Miike said large landowners could be the applicant but would need to provide the information on all the individual users; but the individual users still has to be justified within the larger context of the overall permit.

Kapua Sproat represents the community groups that filed the petition for surface water management area designation. Sproat thanked and commended the staff and deputy director for their work on this long standing issue. Sproat's concern is for existing water users needing to get the signature of the landowner at the site of the diversion and felt it will be an issue if the landowner refuses to sign the permit application. Sproat mentioned that Wailuku Water Company could effectively preclude people from being able to establish that they are existing water users by refusing to sign the application.

Sproat said the Commission in the Waiahole Irrigation Company case issued permits to the individual water users.

Commissioner Miike said the staff should come up with alternatives on how to deal with that in case it becomes an issue.

Lenore Ohye said §174C-51(1)B has a provision stating that if the applicant is not the landowner at the source, the landowner must be stated as a joint applicant if the applicant has a terminable interest in the land at the water source.

Commissioner Miike said the statute only requires the name and address to be stated, but doesn't say anything about the landowner needing to sign the application. Miike said the AG could research this issue in anticipation of any problems.

F. NEXT COMMISSION MEETINGS (TENTATIVE)

1. May 21, 2008
2. June 18, 2008

The meeting was adjourned at 10:50 a.m.

Respectfully submitted,

KATHLEEN OSHIRO
Secretary

APPROVED AS SUBMITTED:

KEN C. KAWAHARA
Deputy Director